think that there would have been any difficulty in slipping a small bundle of notes into the pocket of the appellant without attracting his attention. The more difficult question is whether he could have failed to be conscious of the notes when he put his hands into his pockets. The learned District Judge is quite sure that the supposition is impossible. I am unable without evidence as to what else, if anything, the pocket contained, to feel so sure on the matter.

After careful consideration I have come to the conclusion that it would be unsafe to convict. The appeal is, therefore, allowed and the conviction quashed.

Appeal allowed.

CONSTANCE QUAKER (M.W.)
v.
KHO SEOK ENG.

[Orig. Civ. Juris. (Murray-Aynsley, C.J.) May 30, 1950]

[Singapore — Suit No. 856 of 1949]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 13 — Mortgage repaid during occupation period — Whether prevented from re-opening the transaction.

During the Japanese occupation of Singapore a pre-war mortgage loan was repaid under circumstances that the mortgagee would have been entitled to have the amount of the debt revalued and to recover the revalued amount under the Debtor and Creditor (Occupation Period) Ordinance, 1949. When the said debt was repaid the mortgaged property was not reconveyed to the mortgagor. In 1948 a mutual agreement was entered into whereby the mortgagee on being given $100/- and a promise of a further $150/- reconveyed the said property to the mortgagor.

Held, that the aforesaid agreement did not provide for the payment or settlement of the pre-occupation debt within the meaning of section 13 (b) of the Debtor and Creditor (Occupation Period) Ordinance, 1949.

CIVIL SUIT.

C. J. Koh for the plaintiff.

Eric Choa for the defendant.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — This case involves a small point under the Debtor and Creditor (Occupation Period) Ordinance, 1949. Certain property was mortgaged before the occupation period. During the occupation period the amount owing on the mortgage was repaid under such circumstances that the mortgagee would have been entitled to have the amount of the debt revalued and to recover the balance in ordinary circumstances. As it is, the question arises whether the mortgagee is prevented by section 13 from re-opening the transaction.

The circumstances are these. When the debt was repaid the property was not reconveyed to the mortgagor, who was given the documents of title. An agreement was entered into between the parties in the following terms :—

"The parties concerned have heretofore consented and mutually agreed upon to dissolve the existing indenture abiding to the following conditions:—

1. The sum of one thousand Dollars ($1,000.00) to be paid by the Mortgagor to the Mortgagee in settlement of the amount received as stated in the previous existing Indenture.
2. All the necessary documents appertaining to the said property known as No. 19 Lincoln Road, to be returned to the Mortgagor upon payment of the above prescribe amount, together with interest thereto if any.
3. Upon completion of this Indenture all previous documents relating to the Mortgage are to be treated as null and void and the Mortgagee shall have no further claims whatsoever against the said property.

This Indenture has been prepared at the consent of the above parties and have hitherto agreed jointly that the foregoing conditions be treated legally binding."

After the occupation period nothing happened until 1948 when an agreement to the following effect was entered into. The mortgagee reconveyed the property and was given $100 in cash and promised a further $150 if the property should be sold. At that time the position of the parties, owing to the existence of the Moratorium Proclamation, was that the mortgagor had no right to reconveyance while the mortgagee had no right to recover any part of the mortgage debt. Subsequent legislation created new rights for mortgagees. As I have said, the mortgagee is entitled to something unless section 13 prevents that right from arising in the circumstances. That section reads as follows :—

"13. Nothing in this Ordinance shall affect any agreement made between a debtor and creditor at any time after the end of the occupation period for the purpose of —

(a) Valuing any payment made during the occupation period in respect of a pre-occupation debt or an occupation debt (whether accrued due or not); or
(b) Providing for payment or settlement of any pre-occupation debt or occupation debt or part thereof; or
(c) Determining the rate for payment of any such interest as is referred to in sub-section (1) of section 10 of this Ordinance."

The words to be considered are those under the heading (b). There is here an agreement made after the end of the occupation period. Did that agreement provide for the payment or the settlement of a pre-occupation debt? Certainly not for the payment. Can it be described as a settlement? In my opinion the parties had no intention of doing anything except of disposing of the outstanding legal estate. I am not satisfied that the agreement extended to any claim that might arise as the result of future legislation.

In the circimstances the plaintiff is entitled to the amount claimed and there will be judgment accordingly with costs.

Judgment for the plaintiff.

DIANA ELLIS v. KHOO EK NEO AND ANOR. *

[Orig. Civ. Juris. (Evans, J.) May 31, 1950]

[Singapore — Originating Summons No. 40 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1949, s. 11 — Application of former Mortgagee for reinstatement of security and avoiding of a Reconveyance executed during Japanese occupation — Claim by subsequent Purchaser against Mortgagor for damages for breach of statutory covenants for title implied in the Assignment from the Mortgagor to the Purchaser made subsequent to the Reconveyance.

Certain leasehold premises were prior to the Japanese occupation of Singapore mortgaged by the Mortgagor (Khoo Ek Neo) to a Mortgagee (Diana Ellis) who was absent from Singapore during the Japanese occupation. The Mortgagor on or about the 27th September 1944 agreed with a purchaser (Tham Khiam Chow) to purchase the property and a written sale contract was prepared by the Mortgagor-Vendor's Solicitor and was signed both by the Mortgagor-Vendor and by the Purchaser. This agreement for sale expressly set out that "the Vendor shall sell and the Purchaser shall purchase the lands and premises described in the Schedule hereto free from incumbrances".

The agreement also provided in Clause 12 that "The purchaser hereby acknowledges that the Reconveyance of the existing mortgage in favour of Diana Ellis will be executed by the Custodian of Enemy Property and no objection or requisition shall be made in connection therewith whatever". A Reassignment of the property from the Custodian of Enemy Property for the Municipality of Syonan to the Mortgagor free from the Mortgage debt was made on the 12th February 1945 and registered in the Registry of Deeds in Singapore. Subsequently on the same day the Mortgagor assigned the lands and premises included in the mortgage to the Purchaser by the following words namely "the Vendor hereby assigns unto the Purchaser All the said lands and premises described in the Schedule hereto To hold the same unto the Purchaser her executors administrators and assigns for all the residues now unexpired of the several terms of 999 years and 99 years . . . . . ."

Held, that the Assignment to the Purchaser imported the statutory covenants for title set out in section 7(1)(a) of the Conveyancing and Law of Property Ordinance (Cap. 113) and that those covenants being unqualified, not having been varied or altered by anything contained in the Assignment, were absolute and binding without regard to consideration or circumstances.

Held, therefore that since the breach of those covenants had not been disputed, the Purchaser was entitled to a declaration that she was entitled to recover against the Mortgagor damages for breach of the said covenants for title implied in the Assignment by the Mortgagor to the Purchaser.

Cases referred to:—

(1) *Alexander v. Rayson* (1936) 1 K.B. 169 at p. 178.

(2) *Parry v. Aluminium Corporation Ltd.* (1940) W.N. 44 at p. 46.

(3) *Laurie v. Raglan* (1942) 1 K.B. 152 at p. 155.

(4) *Page v. Midland Railway Co.* (1894) 1 Ch. 11.

(5) *Great Western Railway v. Fisher* (1905) 1 Ch. 316 at p. 322.

(6) *Eastwood v. Ashton* (1913) 2 Ch. 39 at p. 51; H.L. (1915) A.C. 900.

(7) *Wise v. Whitburn* (1924) 1 Ch. 460.

(8) *Debenham v. Sawbridge* (1901) 2 Ch. 98.

(9) *Clayson v. Leach* 6 L.T.R. 69.

(10) *Scott v. Coulson* (1903) 2 Ch. 249.

ORIGINATING SUMMONS.

J. C. Cobbett for the Mortgagee, the Plaintiff.

Philip Hoalim for the Mortgagor, the 1st Defendant.

John Laycock and *Denis Murphy* for the Purchaser, the 2nd Defendant.

Cobbett contended that the Mortgage having been dischargd by a reconveyance made by the Japanese Custodian was *prima facie* void under Section 11(1) of the Debtor and Creditor (Occupation Period) Ordinance. Proviso (b) to that sub-section had no application to the present case. He did not dispute that the 2nd Defendant was a *bona-fide* purchaser for value; nor did he dispute that the Reconveyance was one separate transaction and the sale another separate transaction and he did not suggest that the Custodian had intervened in the sale. But the reconveyance to the Mortgagor had not been made by "the Mortgagee or his agent" in the words of the proviso and so there was nothing in the proviso to take this case out of the general terms of sub-section 1 of section 11 and the reconveyance therefore must be void.

Philip Hoalim did not oppose Cobbett's contentions and submitted to an order being made against his client in favour of the Plaintiff.

John Laycock contended that the 2nd Defendant was a *bona-fide* purchaser for value and that after the discharge or purported discharge of the property by the reconveyance it had been transferred to the 2nd Defendant as a *bona-fide* purchaser without the intervention of the Custodian "in the transaction", which must mean the transfer of the property to the purchaser, that is to say the assignment on sale. He

* The first defendant has given notice of appeal and the appeal is pending. — *Ed. M. L. J.*